



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 04-114
D.T.E. 03-118

October 19, 2005

Petition of Cambridge Electric Light Company and Commonwealth Electric Company
requesting approval of their 2004 Transition Cost Reconciliation Filing, pursuant to
G.L. c. 164, §1A(a) and 220 C.M.R. § 11.03 (4)(e).

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FOR: COMMONWEALTH ELECTRIC COMPANY and
CAMBRIDGE ELECTRIC LIGHT COMPANY
Petitioners

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FOR: THE ENERGY CONSORTIUM
Limited Participant

I. INTRODUCTION

On December 7, 2004, pursuant to G.L. c. 164, § 1A(a) and 220 C.M.R. § 11.03(4)(e), Cambridge Electric Light Company (“Cambridge”) and Commonwealth Electric Company (“Commonwealth”) d/b/a NSTAR Electric (collectively, “the Companies”) filed with the Department of Telecommunications and Energy (“Department”) their 2004 reconciliation filing, which consists of the reconciliation of transition, transmission, standard offer service and default service costs and revenues, and proposed updated charges and tariffs. On December 29, 2004, the Department determined that further investigation was necessary and allowed the tariffs to take effect as of January 1, 2005, subject to reconciliation following the conclusion of its investigation. Cambridge Electric Light Company/ Commonwealth Electric Company, D.T.E. 04-114. On January 14, 2005, pursuant to a joint motion of the Companies and the Attorney General of the Commonwealth (“Attorney General”), the Department consolidated the Companies’ 2004 reconciliation filing with their 2003 reconciliation filing, which is docketed as Cambridge Electric Light Company/ Commonwealth Electric Company, D.T.E. 03-118. The Attorney General intervened as a matter of right pursuant to G.L. c. 12, § 11E and The Energy Consortium was granted limited participant status.

On February 12, 2005, pursuant to notice issued, the Department conducted a public hearing and procedural conference.¹ On September 19, 2005, the Companies and the Attorney

¹ Evidentiary hearings were scheduled to begin on June 2, 2005. On May 19, 2005, the Department suspended the procedural schedule at the request of the Companies because
(continued...)

General (together, “Parties”) filed: (1) a Joint Motion for Approval of Settlement Agreement (“Joint Motion”); and (2) a Settlement Agreement (“Settlement”) that purports to resolve certain issues related to this proceeding.² No comments were filed on the Settlement.

II. THE SETTLEMENT

The Settlement states that it resolves all issues relating to the reconciliation of costs and revenues for the calendar years 2003 and 2004 with the following three exceptions: (1) the reconciliation of transmission costs and revenues and the propriety of the recovery of certain transmission costs; (2) the Blackstone Station Revenue Credit included in Exhibit CAM-CLV-1 (Settlement), page 10; and (3) costs included in the transmission reconciliation associated with Mirant Kendall (Settlement at §§ 1.9, 3.1). The Parties have agreed to defer consideration of the issues relating to Blackstone Revenue Credit and Mirant Kendall until the Companies’ 2005 reconciliation proceeding (Settlement at § 3.3). Upon Department approval of the Settlement, the Parties will propose a procedural schedule for an evidentiary hearing to resolve the reconciliation of transmission costs and revenues (Settlement at § 3.2).

¹ (...continued)
the Utility Workers of America, AFL-CIO Local 369 went on strike against the NSTAR companies. On September 1, 2005, the Department conducted a second procedural conference.

² The Joint Motion requests that the Department enter into evidence: (1) 98 exhibits of the Companies; (2) six Settlement exhibits; (3) 26 responses to Department information requests; and (4) 41 responses to Attorney General information requests (Joint Motion at 1; Settlement App. A). The Department grants this request. In addition, pursuant to 220 C.M.R. § 1.10(3), the Department incorporates by reference into this proceeding the Companies’ Restructuring Settlement Agreement approved in Cambridge Electric Light Company/ Commonwealth Electric Company, D.P.U./D.T.E. 97-111 (1998).

The Settlement establishes a reconciliation of costs and revenues for the years 2003 and 2004 (Settlement at § 2.1). The Settlement closes out the repayment of divestiture proceedings being held by Energy Investment Services, Inc. (“EIS”)³ by making changes to the residual value credit of the fixed component of the transition charge (Settlement at § 2.2(a); Exhs. CAM-CLV-1 (Settlement); COM-CLV-1 (Settlement); CAM-CLV-2A (Settlement); COM-CLV-2A (Settlement)). The Settlement provides that Commonwealth’s payment in lieu of property taxes for 2003 to the Town of Plymouth is reduced by \$0.66 million to reflect actual payments (Settlement at § 2.2(b); Exhs. COM-CLV-2 (Settlement) at 2, Column D; COM-CLV-2 (Settlement) at 1, Column A; COM-CLV-1 (Settlement) at 5, Column G; COM-CLV-1 (Settlement) at 1, Column F). The Settlement also provides that Commonwealth’s Mitigation Incentive Adjustment is reduced by \$3.287 million because the Northeast Energy Associates Limited Partnership restructuring approved by the Department in Boston Edison Company, D.T.E. 04-85 (2005) did not occur until February 28, 2005 (Settlement at § 2.2(c); Exh. COM-CLV-1 (Settlement) at 6, Column C). Finally, the Settlement states that the Companies have removed from the reconciliation filings legal costs associated with representing the interests of retail customers concerning Independent System Operator-New England market issues and associated litigation before the Federal Energy Regulatory Commission (Settlement at § 2.2(d); Exhs. CAM-CLV-1 (Settlement) at 5, Column

³ EIS is a special-purpose affiliate that was created by the Companies to hold and manage the net proceeds from the sale of Canal Electric Company's electric generating facilities. Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 98-78/83-A at 3 (1998). The Department approved the creation of EIS in D.T.E. 98-78/83-A. Id. at 13.

G; COM-CLV-1 (Settlement) at 5, Column G; CAM-CLV-2 (Settlement); COM-CLV-2 (Settlement)).

In addition, the Settlement states that, other than where expressly stated, the Settlement: (1) shall not constitute an admission by any party that any allegation or contention in this proceeding is true or false; and (2) shall not in any respect constitute a determination by the Department as to the merits of any issue raised during the proceedings (Settlement at § 4.1). The Settlement also states that it establishes no principles and, except as to those issues resolved by approval of this Settlement, shall not foreclose any party from making any contention in any future proceedings (id. at § 4.2).

The Settlement provides that the Parties agree that the content of Settlement negotiations (including work papers and documents produced in connection with the Settlement) are confidential (id. at § 4.3). The Settlement also states that all offers of settlement are without prejudice to the position of any party or participant presenting such offer or participating in such discussion (id.). The Settlement provides that the content of Settlement negotiations are not to be used in any manner with these or other proceedings involving Parties to this Settlement (id.).

Should the Department not approve the Settlement in its entirety by October 19, 2005, the Settlement states that it shall be deemed withdrawn and not constitute any part of the record in this proceeding or be used for any other purpose (id. at § 4.5).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with applicable law, including relevant provisions of the Restructuring Act, Department precedent, and the public interest. Boston Edison Company, D.P.U./D.T.E. 96-23, at 13 (1998); Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I) (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

IV. ANALYSIS AND FINDINGS

Upon review of the entire record in this proceeding, the Department finds that, on balance, the Settlement represents a reasonable resolution of the issues in this proceeding. The Department finds that the Settlement's method of reconciling costs and revenues is consistent with the Companies' Restructuring Plans and Department precedent. Moreover, the Settlement's method of reconciling costs and revenues substantially complies with the Restructuring Act and is in the public interest. Therefore, the Department approves the Settlement.⁴

⁴ The Department notes the Settlement's confidentiality provision set out at § 4.3 does not bind the Department or preclude its inquiry as events may warrant. To the extent that the parties intend the assertion of confidentiality to be a motion for protective treatment, it is premature.

V. ORDER

Accordingly, after review and consideration, it is

ORDERED: That the Joint Motion for Approval of Settlement Agreement, submitted by Cambridge Electric Light Company and Commonwealth Electric Company and the Attorney General on September 19, 2005, is ALLOWED and the Settlement Agreement is therefore APPROVED.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Judith F. Judson, Commissioner

_____/s/_____
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.